

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3638 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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VASUDEV RANCHHODBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :

Shri V.B. Malik for Shri M.A. Kharadi for Petitioner(s).

Shri Dipen Desai, AGP for Respondent(s) : 1 - 2.

Shri N.M. Kapadia for Respondent(s) : 3 - 6.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/06/2007

ORAL JUDGMENT

Certain agricultural land in Block No.177 admeasuring 5
Hectares 33 Are and 46 sq. mtrs. and Block No.178 admeasuring 1 Are

and 73 sq. mtrs. was sold by a registered sale deed dated 14th March, 1985 with a further stipulation that irrigation facility would be available to the purchaser. The right in the property was sold by Ishwarbhai Vithhalbhai, both sons of Dahyabhai. The entries in relation to the said transactions were made on 27th April, 1985 and the entries came to be certified on 23rd July, 1985. The respondent No.3 herein, namely, Bhagabhai Chhibabhai filed Revision Application No.585 of 1994. The respondent No.2, Deputy Collector (Olpad Division), exercising his revisional powers held that the sale transaction was not in accordance with law and was hit by the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as “the Fragmentation Act” for the sake of brevity). Being aggrieved by the said order, the petitioner preferred Revision Application before respondent No.1 (State of Gujarat). The revision came to be registered as SRD/Con./SAT-1/95; it was allowed on 25th February, 1997. It is made clear that in relation to property bearing Survey No.178, no entry was made, therefore, no order has been made by the revisional authority. Being aggrieved by the order passed by the Secretary (Appeals), the petitioner is before this Court.

2. The facts necessary for disposal of the present Writ Application are that the land originally belonged to one Chhibabhai, who was succeeded by his three sons, Bhagabhai, Narayanbhai and

Dahyabhai. After the death of Dahyabhai, the sellers - Ishwarbhai and Vithhalbhai, both sons of Dahyabhai, succeeded to the rights of the deceased Dahyabhai and thereafter, sold their rights in the property to the present petitioner, Vasudev - son of Ranchhodbhai Patel.

3. Shri Malik, learned Counsel for the petitioner, submits that the provisions of the Fragmentation Act would not apply to the present set of facts because even after transfer of the rights, there had been no actual division of the property, in absence of the partition by metes and bounds no fragmentation would come into being. Placing reliance upon a judgement of the single Bench of this Court in the matter of *Sarvagna Navinchandra Godiawala vs. State of Gujarat & Ors.*, [2003(1) G.L.H. 426], it is also submitted that if an entry is made under the provisions of law, then, such sale entry cannot be set aside after undue delay. He also placed reliance upon another judgement of the single Bench of this Court in the case of *Babubhai Hirabhai & Ors. vs. City Deputy Collector, Ahmedabad*, [2000 (2) GCD 1566 (Guj.)], to contend that in absence of actual division by metes and bound, there is no division which could violate Section 8 of the Act.

4. Shri Dipen Desai, learned Counsel for the State, submits that as the dispute is between the private parties, the State has nothing

to say.

5. Shri Kapadia, learned Counsel for the private respondents, however, submits that present is a case where the interest of a third party has come into being and as the third party has already occupied a particular parcel of land without there being any partition by metes and bound, the authorities were justified in holding that there was breach of the provisions of the Fragmentation Act.

6. The judgement in the matter of ***Babubhai Hirabhai*** (*supra*) refers to yet another judgement in which the vendor and vendee in question agreed to enter their names jointly in respect of the entire block and not to partition the land in question. The High Court observed that if the parties want to treat them as co-sharer, then, there would be no breach of the Act. The learned Judge also relied upon yet another judgement wherein it was held that if the interest of one of the owners of the fragment gets enlarged or is transferred, the prohibition under Section 7(1) would not apply. The Court observed that unless there is partition by metes and bound, the parties would be entitled to continue as joint owners.

7. On the facts, the Court in the matter of ***Babubhai Hirabhai***

(*supra*) came to the conclusion that the shares of the family members in the land in question has been determined, but, the actual division of the land has not come into effect and the land remained undivided and unpartitioned by making entry in the revenue records in favour of the family members by determining the particular share of each family member in their favour, without actual division by metes and bound, the land remained undivided and unpartitioned. The learned single Judge observed that in such a case there is no breach of the provisions of the Act.

8. In the present matter, it is not in dispute before me that some of the co-owners have transferred their right and interest in the property, in favour of an outsider. The said outsider after purchasing the property has become joint owner though not member of the joint family, but, after purchasing the property, he has acquired a right to seek partition. Once he seeks partition and, the partition by metes and bound, if lead to creation of fragmentation then only the provisions of the Act would apply. In such case, the Court if finds that the partition would create a fragment then, it may allot the land to one of the members of the family and compensation to others.

9. In the matter of *Sarvagna Navinchandra Godiawala*

(*supra*), the learned Judge has observed that if the revenue authorities are aware about the transaction and an application for setting aside the transaction is made after a long delay, then, the revisional authority would not be entitled to take up the matter in revision and set aside the entries. In the present matter, from the records, it appears that the sale was effected somewhere in the year 1985, the name came to be mutated on 27th April, 1985 and the entry was certified on 23rd July, 1985, knowing everything well other co-owners did not challenge the transaction, mutation entry or certification of the entry for a period of nine years. The delay of nine years and more has also not been properly explained by the contesting respondents.

10. Taking into consideration the legal position and factual aspects and the judgements of this Court, I am of the opinion that the learned Collector was not entitled to interfere in the matter, nor he could set aside the transaction or the entries. The learned Secretary (Appeals) was unjustified in confirming the order passed by the Collector. The order dated 14th November, 1994 passed by the Deputy Collector in Revision Case No.585 of 1994 and the order dated 25th February, 19997 passed by the learned Secretary (Appeals), Revenue Department in SRD/Con./Sat/1/95 are hereby quashed and set aside.

11. The petition is allowed, but, however, there shall be no orders as to costs. Rule is made absolute.

[R.S.Garg, J.]

*kamlesh**